



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.        | CONFIRMATION NO. |
|--|-------------|----------------------|----------------------------|------------------|
| 10/816,238   | 04/01/2004  | Joseph M. Asher      | 069547.0193                | 9139             |
| 5073   | 7590        | 04/06/2007           |                            |                  |
| BAKER BOTTS L.L.P.<br>2001 ROSS AVENUE<br>SUITE 600<br>DALLAS, TX 75201-2980 |             |                      | EXAMINER<br>POND, ROBERT M |                  |
|  |             |                      | ART UNIT<br>3625           | PAPER NUMBER     |
| SHORTENED STATUTORY PERIOD OF RESPONSE                                       |             | NOTIFICATION DATE    |                            | DELIVERY MODE    |
| 3 MONTHS   |             | 04/06/2007           |                            | ELECTRONIC       |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/06/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mike.furr@bakerbotts.com  
 ptomail1@bakerbotts.com

## Office Action Summary

Application No.

10/816,238

Applicant(s)

ASHER ET AL.

Examiner

Robert M. Pond

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

The Applicant amended claims in response to claim objections and 112 2<sup>nd</sup> paragraph rejections. All pending claims 1-37 were examined in this non-final office action necessitated by new grounds of rejection.

### ***Response to Arguments***

Applicant's argument, see Remarks, filed 26 December 2006, with respect to the rejection(s) of claim(s) 1-37 under 35 USC 102 and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Mossberg and Krueger. Applicant's arguments are moot. New grounds of rejection are based on Mossberg as the primary reference.

Claim objections for claims 33 and 37 are withdrawn due to amendment.

Rejections under 35 USC 101 and 112 for claims 21-32 are withdrawn due to amendment.

The Applicant's independent claims are overly broad. A preponderance of the patent and patent publication auction prior art reads on these claims in light of the instant specification, in particular page 12, line 23 through page 13, line 8, pertaining to client device relationships to a server.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

- 3. Claims 1-9, 11-19, 21-31, 33, and 34 are rejected under 35 USC 103(a) as being unpatentable over Mossberg (US 5,803,500) view of Krueger (Paper #20060904, 20020062276).**

Mossberg teaches a system and method of conducting a silent auction for events whereby bidders are local to the silent auction event. Mossberg teaches the use of bid sheets for traditional silent auctions and teaches an improved method of data entry using machine-readable bid sheets. Mossberg teaches an alternative approach of preprogramming silent auction items and their respective price codes into a computer database that would be accessible through a card reading device located adjacent each silent auction item. To access the computer database through the card reading device, each potential bidder inserts their bidder card and code into the device before placing a bid on the item and recording the bid placed on the item directly into the computer database (i.e. receiving each bid a central repository) (see at least abstract; col. 1, lines 5 through col. 3, lines 16; col. 3, line 43 through col. 5, line 3). Mossberg further teaches:

- Receiving a first bid for an item from a first local client at an auction, the item described in a central repository on a server, users place bids (see at least col. 4, line 58 through col. 5, line 3).

- Receiving a second bid for the item from a second local client at the auction, the second bid greater than the first bid; users place bids (see at least col. 4, line 58 through col. 5, line 3); implied rule for silent auction is a bid that is placed and is greater than the highest bid entered on the bid sheet wins at the conclusion of the silent auction.
- and, communicating each bid to the server for processing, the server operable to determine a winning bid for the item based on predetermined criteria. Winning bidder determined (see at least col. 4, lines 46-57).
- the central repository storing a description for each of a plurality of items operable to be bid on by each client, each item associated with an electronic bid sheet stored at the server. Description of each auction item and personal information concerning each bidder are entered into the database, and a unique code is assigned to each auction item and each bidder (see at least col. 2, lines 32-35).
- each client comprising a graphical user interface operable to receive an identifier of a user. bidder submits bidder card and code into the device before placing a bid on the item which records the information directly into the computer database (see at least col. 4, line 58 through col. 5, line 3).  
  
Please note: the bidder is using an input interface to a computer. As claimed, "graphical" is of no consequence to the outcome of the claimed invention.

Although Mossberg does not disclose receiving each bid via a wireless connection, the combination of Mossberg and Kruger teach and suggest the claimed invention. Mossberg teaches all the above as noted under the 103(a) rejection and teaches a) reading devices for silent and live auctions, accessing the computer database through the card reading device wherein each potential bidder inserts their bidder card and code into the device before placing a bid on the item and recording the bid placed on the item directly into the computer database. Mossberg further teaches "regardless of the method of reading the codes, they are transmitted in computer readable form to a computer linked to the reading device via cable, modem, or other electronic means (see at least col. 4, lines 46-57). On the other hand, Kruger teaches other electronic means of using wireless devices (i.e. client devices) to submit bids at a live auction to a remotely connected or locally connected server managing the auction, and further teaches aspects of silent auctions and the use of graphical user interfaces (e.g. web browsers, GUIs) (see at least abstract; 0011, 0013-0016; 0026, 0034, 0056). Kruger teaches the live auction, conducted at the live auction site, will have attendees and an auctioneer, and assistants may also be present. As the auction is conducted, the LAMS server keeps track of the current bid and offer, for each and every item, through closing of the bids. As such, the information is transmitted and shared through the LAMS server, through the remote Wireless Network Proxy Server(s), to the hand held devices interested in the particular auction. Additionally, a hand held wireless subscriber can indicate the items of

interest and receive notification, only for those items. Notification means would remain restricted to the capabilities of the device. Audible, visual or tactile notification means can be utilized (see at least 0016, 0047). Krueger further teaches the goal of harnessing the best geographically unbounded real time systems available using wireless technology (see at least 0014). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Mossberg at time the invention was made to implement a wireless connection as taught by Krueger, in order to harness the best geographically unbounded real time systems available using wireless technology for auction events, and thereby increase auction participation.

Although Mossberg does not disclose the server comprising an offsite server, the combination of Mossberg in view of Krueger teach and suggest the claimed invention. Mossberg teaches all the above as noted under the 103(a) rejection and teaches the auction computer linked to the reading devices via cable, modem, or other electronic means (see at least col. 4, lines 46-57). On the other hand, Krueger teaches the auction server being either remotely located or being located at the auction location (see at least abstract; Figs. 1-2; 0024, 0044).

Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Mossberg at time the invention was made to implement a wireless connection to either a local or remote auction server as taught by Krueger, in order to harness the best geographically

unbounded real time systems available using wireless technology for auction events, and thereby increase auction participation.

Although Mossberg does not disclose predetermined criteria, the combination of Mossberg in view of Krueger teach and suggest the claim invention. Mossberg teaches all the above as noted under the 103(a) rejection concluding an auction, determining a winning bidder, and the winning bidder being the highest bidder. On the other hand, Krueger teaches auction start and stop time as predetermined criteria. Krueger further teaches implementing a rule to have a time and date the bidding commences and a time and date where bidding ends and using time/date stamps as a component to ensure fairness to bidders (see at least abstract; 0041, 0046). Therefore it would have been obvious to one of ordinary skill in the art at time the invention was made to modify the system and method of Mossberg to implement a rule that predetermines a start and stop date and time for an auction as taught by Krueger, in order to ensure fairness in identifying the time and date of an auction, and thereby encourage participation.

Although Mossberg does not disclose the claimed subject matter of claims 29 and 30, Mossberg in view of Krueger teach and suggest the claimed subject matter. Mossberg teaches a bidder having dialog with the auctioneer during a live auction. On the other hand, Krueger teaches bidders being notified that their bid is too low via their wireless device (see at least 0059). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Mossberg to notify a bidder (or subsequent bidders)



they have been outbid as taught by Krueger, in order to make bidders aware of their current bid situation, and thereby encourage a new bid and thereby increase auction sales.

Pertaining to claims 1-9

Rejection of system claims 1-9 is based on the same rationale as noted above.

Pertaining to claims 21-31, 33, and 34

Rejection of logic claims 21-31 and 34 is based on the same rationale as noted above.

- 4. Claims 10, 20, and 32 are rejected under 35 USC 103(a) as being unpatentable over Mossberg (US 5,803,500) and Krueger (Paper #20060904, 20020062276), as applied to claims 1 and 11.**

Although Mossberg and Krueger do not disclose determining a winning bid for the item based on predetermined criteria comprises the server operable to determine a highest bid on the item after determining that no new bids have been received for a pre-determined amount of time. Mossberg and Krueger further in view of one of ordinary skill in the art teach and suggest the claimed invention. Mossberg and Kruger teach i) live and silent auction implementations, ii) predetermined date and time criteria for starting and ending an auction, and further teach once the item has had a fair presentation to the live, real time participants and the participants have submitted or indicated their highest bid,

and the auctioneer ends the bidding for the item (Krueger: 0041). On the other hand, one of ordinary skill in the art at time the invention was made would ascertain the need in the silent auction format that is absent an auctioneer, to likewise apply a fair presentation of the item under silent auction to program a time duration limit after the highest entered bid to end the silent auction of the item.

Pertaining to claim 10

Rejection of system claim 10 is based on the same rationale as noted above.

Pertaining to claim 32

Rejection of logic claim 32 is based on the same rationale as noted above.

- 5. Claims 35 and 37 are rejected under 35 USC 103(a) as being unpatentable over Mossberg (US 5,803,500) and Krueger (Paper #20060904, 20020062276) as applied to claim 33, further in view of Admon (US 2006/0287924).**

Although Mossberg and Krueger do not disclose the claimed subject matter or claims 35 and 37, Mossberg and Krueger further in view of Admon teach and suggest terminating an auction session based on number of bids and predetermined time limit. Mossber and Krueger teach all the above as noted under the 103(a) rejection and teach a) using predetermined criteria of time in silent/live online auctions to terminate an auction selling goods and/or services, and further teach using silent auctions for fund raising at charitable events. On

the other hand Admon teaches online auction system and methods, extending an auction session if the minimum number of bids is not reached, and further teaches setting a minimum number of bids with a time limit (please note interpretation: auction is automatically terminated if the minimum number of bids is not reached by the time limit) (see at least Fig. 1; 0045). Therefore it would have been obvious to one of ordinary skill in the art at time the invention was made to modify the system and method of Mossberg and Krueger to automatically end an auction session if the bid count is not greater than a predetermined number as taught by Admon, in order to ensure a minimum number of bids.

- 6. Claims 35, 36, and 37 are rejected under 35 USC 103(a) as being unpatentable over Mossberg (US 5,803,500), Krueger (Paper #20060904, 20020062276) as applied to claim 33, further in view of Goodwin (US 2003/0220867)**

Although Mossberg and Krueger do not disclose the claimed subject matter of claims 35, 36, and 37, Mossberg and Krueger further in view of Goodwin teach and suggest extending auction sessions. Mossberg and Krueger teach all the above as noted under the 103(a) rejection and teach a) using predetermined criteria of time in silent/live online auctions to terminate an auction selling goods and/or services, and further teach using silent auctions for fund raising at charitable events. On the other hand, Goodwin teaches an online auction system

and method of terminating an auction session in a predetermined time period or increasing the number of bids by extending bidding sessions. Goodwin further teaches:

“In one example of the system 30 employing the time extension embodiment, several auctions were held in which the time extension increment was set to five minutes. In one such auction the auction system 30 extended the closing of the auction three times for a total of fifteen extra minutes. These three extensions resulted in a two percent increase in proceeds to the Seller, and a sixteen percent increase in the total number of bids. In another such auction employing the time extension embodiment, the auction system 30 extended the closing of the auction twenty-four times for a total extension duration of one hundred and twenty minutes. These twenty-four extensions resulted in a thirteen percent increase in proceeds to the Seller, and a thirty-eight percent increase in the total number of bids.” See at least 0224.

Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Mossberg and Krueger to extend auction sessions by using time extensions to increase the number of bids as taught by Goodwin, in order to increase auction sales, and thereby increase fund-raising for charitable events. Although the combination of Mossberg and Krueger further in view of Goodwin do not disclose using the number of bids as the parameter for extending an auction session, it would have been obvious to one of ordinary skill in the art examining the evidence presented by Goodwin correlating time extensions to number of bids, to ascertain that “number of bids” could be use as an additional threshold condition for terminating or continuing an auction session over a predetermined time extension.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

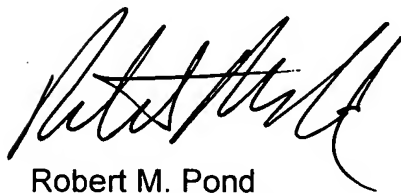
- US 2003/0225669 (Cohen) 04 December 2003; teaches silent auction system and methods.
- Blue Moon Interactive: Internet Archive Wayback Machine, [www.archive.org/.../www.bluemooninteractive.com](http://www.archive.org/.../www.bluemooninteractive.com); 23 April 1999, 5pgs; teaches using computers and display devices to run and manage silent auctions for live fund raising events.
- Abelauctions: Internet Archive Wayback Machine, [www.archive.org/.../www.ableauctions.com](http://www.archive.org/.../www.ableauctions.com); 01 June 2002, 02 August 2002, 5pgs; teaches online silent auction system and methods.
- O'Brien, Dan; "Denver-base newspaper chain to advertise silent, online auction" Knight Ridder Tribune Business News, 28 March 2003, Proquest #31962931, 3pgs; teaches auctioning automobiles, furniture, travel packages, appliances and more to online bidders.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robert M. Pond  
Primary Examiner  
April 1, 2007